IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WA.No. 1182 of 2004

(AGAINST THE JUDGEMENT IN WPC.6178/2004 Dated 20/02/2004)

APPELLANTS/ RESPONDENTS IN THE WRIT PETITION:
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1. THE EXCISE COMMISSIONER,
   COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.

2. THE ASSISTANT EXCISE COMMISSIONER,
   EXCISE DIVISION OFFICE, KALPETTA, MUTTIL P.O.,
   WAYANAD.

BY SPECIAL GOVERNMENT PLEADER SHRI C.T. RAVIKUMAR

RESPONDENT/PETITIONER IN THE WRIT PETITION:

A.O. VARGHESE,
ADUKALLIL HOUSE, 3/341 KENICHIRA,
WAYANAD DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1182 OF 2004

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Dated this the 16th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The State Government being aggrieved by the orders passed by the learned single Judge in W.P.(C) No. 6178 of 2004 dated 20.02.2004 is before us in this appeal.

2. In the Writ Petition filed, the petitioner therein had questioned Ext.P3 order passed by the Commissioner of Excise, wherein he had declined to interfere with the suo motu revision petition filed by the petitioner therein against the orders passed by the Assistant Commissioner of Excise.

3. This Court, while allowing the Writ Petition, had directed the Commissioner of Excise to entertain the revision petition filed by the petitioner therein and decide the same on merits. For doing so, the learned single Judge had relied upon the observations made by this Court in **Avinasiappan vs. State of Kerala** (**1998 (1) KLT 894**). Aggrieved by the orders passed by the learned single Judge, the State Government is before us in this appeal.

4. Learned counsel appearing for the revenue brings to our notice that the observations made by this court in ***Avinasiappan's*** case has been reversed by the Apex Court and therefore, submits , that the learned single Judge was not justified in directing the Commissioner of Excise to entertain the revision petition filed by the petitioner therein and to decide the same on

merits.

5. In the instant case, the petitioner in W.P.(C) 6178 of 2004/respondent herein being aggrieved by the orders passed by the Asst. Commissioner of Excise had preferred a revision petition before the Commissioner of Excise . Revisional powers can be exercised by Commissioner of Excise suo motu , but not at the instance of an aggrieved person. Further this Court had taken the view in ***Avinasiappan's*** case that suo motu revisional powers can be initiated either by the department on its own or at the instance of an applicant. Keeping that aspect of the matter in view, the learned single Judge has taken exception to Ext.P3 order passed by the Commissioner of Excise , wherein he had declined to entertain the revision petition filed by the petitioner.

6. The orders passed by this Court in ***Avinasiappan's*** case has been overruled by the Apex Court and in that, the Apex Court has stated that under the Act, the Commissioner can exercise his suo motu revisional power on its own and that it cannot be done at the instance of an aggrieved person. If that is so, in our opinion, the Commissioner of Excise was justified in declining to entertain the revision petition filed by the petitioner. The orders so passed by the Commissioner of Excise could not have been interfered with by the learned single Judge, relying upon the decision of this court in ***Avinasiappan's*** case. In view of the above and in view of the declaration made by the Apex Court in **State of Kerala vs. N. Avinasiappan** (**Civil Appeal No.225 of 1999)**, the orders passed by the learned single Judge requires to be interfered with. Accordingly the following:

O R D E R

i) Writ Appeal is allowed.

ii) The order passed by the learned single Judge in W.P.(C) No. 6178 of 2004 dated 20.02.2004 is set aside.

ii) Liberty is reserved to the respondent herein/petitioner in W.P. (C) , if he so desires, to question the correctness or otherwise of the orders passed by the Assistant Commissioner of Excise, before an appropriate forum.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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